

REMARKS

The Examiner is thanked for the thorough examination of this application. The Office Action, however, tentatively rejected all claims 1-3. Specifically, claims 1-3 were tentatively rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Kubo et al (US 6,295,109) in view of Koyama et al (US 6,801,283).

Claim 1

Independent claim 1 recites that "an angle (β_{op}) between a rubbing direction of the first alignment film and a transmissive axis of the first polarization plate is -20° to -60° " and "an angle (β_{down}) between a rubbing direction of the second alignment film and a transmissive axis of the second polarization plate is -20° to 20° " (*Emphasis added*). The Office Action alleged that Koyama et al. disclose in Figure 2 (Column 14, Row 1-30) the rubbing direction of the first alignment film (21b) and the first polarization plate (which is 100 degrees) (4) and the rubbing direction of the second alignment film (21a) and the second polarization plate is about zero degrees. Applicants respectfully disagree. Indeed, Applicants submit that this assertion is unreasonable as it involves strained reasoning.

It is respectfully submitted that the backlight recited in claim 1 is defined to be arranged on the surface of the second polarization plate. Therefore, the polarizer 1 and the polarizer 4, respectively depicted in Figure 2 of Koyama's reference, should be construed as corresponding to the first polarization plate and the second polarization plate of claim 1. Koyama et al disclose that the rubbing direction at the side of the transparent substrate 21a is 235 degrees (column 14, lines 26-27) and the transmissive axis α_1 of the polarizer 1 is 22 degrees (TABLE 2). Applicants respectfully submit that Koyama et al fail to teach or suggest that an angle between a rubbing

direction at the side of the transparent substrate 21a and a transmissive axis $\alpha 1$ of the polarizer 1 is -20° to -60° , as defined by claim 1. For at least this reason, the rejection is misplaced and should be withdrawn.

Moreover, Koyama et al disclose that the rubbing direction of the second alignment film is not in the description and the transmissive axis $\alpha 4$ of the polarizer 4 is 100 degrees (TABLE 2). Applicant respectfully submits that Koyama et al fail to teach or suggest that an angle between a rubbing direction at the side of the substrate 21b and a transmissive axis $\alpha 4$ of the polarizer 4 is -20° to 20° .

As the cited references, singly or combination thereof, do not disclose or suggest that an angle between a rubbing direction of the first alignment film and a transmissive axis of the first polarization plate is -20° to -60° and an angle between a rubbing direction of the second alignment film and a transmissive axis of the second polarization plate is -20° to 20° , claim 1 is patentable over the cited art of record. As claims 2-3 directly or indirectly depend from claim 1, claims 2-3 are patentable by virtue of their dependency from patentable claim 1.

As a separate and independent basis for the patentability of claim 1, Applicants respectfully submit that the Office Action has failed to cite a proper motivation or suggestion for combining the cited references. In this regard, the Office Action stated only that the combination would have been obvious "to lessen the reflectivity." (Office Action, page 4, lines 9-11). This alleged motivation is clearly improper in view of well-established Federal Circuit precedent.

It is well-settled law that in order to properly support an obviousness rejection under 35 U.S.C. § 103, there must have been some teaching in the prior art to suggest to one skilled in the art that the claimed invention would have been obvious. W. L. Gore & Associates, Inc. v. Garlock

Thomas, Inc., 721 F.2d 1540, 1551 (Fed. Cir. 1983). More significantly,

"The consistent criteria for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this [invention] should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art. ..." Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure... In determining whether such a suggestion can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of ordinary skill in the art is charged with knowledge of the entire body of technological literature, including that which might lead away from the claimed invention."

(*Emphasis added.*) In re Dow Chemical Company, 837 F.2d 469, 473 (Fed. Cir. 1988).

In this regard, Applicants note that there must not only be a suggestion to combine the functional or operational aspects of the combined references, but that the Federal Circuit also requires the prior art to suggest both the combination of elements and the structure resulting from the combination. Stiftung v. Renishaw PLC, 945 Fed.2d 1173 (Fed. Cir. 1991). Therefore, in order to sustain an obviousness rejection based upon a combination of any two or more prior art references, the prior art must properly suggest the desirability of combining the particular elements to derive transreflective liquid crystal display device, as claimed by the Applicants.

When an obviousness determination is based on multiple prior art references, there must be a showing of some "teaching, suggestion, or reason" to combine the references. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997) (also noting that the "absence of such a suggestion to combine is dispositive in an obviousness determination").

Evidence of a suggestion, teaching, or motivation to combine prior art references may flow, inter alia, from the references themselves, the knowledge of one of ordinary skill in the art, or from the nature of the problem to be solved. See In re Dembiczak, 175 F.3d 994, 1000, 50

USPQ2d 1614, 1617 (Fed. Cir. 1999). Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be "clear and particular." Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617.

If there was no motivation or suggestion to combine selective teachings from multiple prior art references, one of ordinary skill in the art would not have viewed the present invention as obvious. See In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); Gambro Lundia AB, 110 F.3d at 1579, 42 USPQ2d at 1383 ("The absence of such a suggestion to combine is dispositive in an obviousness determination.").

Significantly, where there is no apparent disadvantage present in a particular prior art reference, then generally there can be no motivation to combine the teaching of another reference with the particular prior art reference. Winner Int'l Royalty Corp. v. Wang, No 98-1553 (Fed. Cir. January 27, 2000).

For at least the additional reason that the Office Action failed to identify proper motivations or suggestions for combining the various references to properly support the rejections under 35 U.S.C. § 103, those rejections should be withdrawn.

For all of these reasons, applicant submits that this application is now in condition for allowance. Prompt issuance of a Notice of Allowance is earnestly solicited.

Conclusion

For the reasons as described above, all pending claims are now in condition for allowance. Withdrawal of the rejections and allowance of all claims, as now amended, are respectfully

requested. Applicant has made every effort to place the present application in condition for allowance. It is therefore earnestly requested that the present application, as a whole, receive favorable consideration and that all of the claims be allowed in their present form.

Should Examiner feel that further discussion of the application and the Amendment is conducive to prosecution and allowance thereof, please do not hesitate to contact the undersigned at the address and telephone listed below.

No fee is believed to be due in connection with this amendment and response to Office Action. If, however, any fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 20-0778.

Respectfully submitted,

By. 
Daniel R. McClure, Reg. No. 38,962

Thomas, Kayden, Horstemeyer & Risley, LLP
100 Galleria Pkwy, NW
Suite 1750
Atlanta, GA 30339
770-933-9500